



conclusory objections. Battle v. United States Parole Comm'n, 834 F.2d 419, 421 (5th Cir. 1987).

Munsch filed his federal petition for writ of habeas corpus in this court on September 20, 2006, pursuant to 28 U.S.C. § 2254. The magistrate judge found that the applicable statute of limitations ran on Munsch's petition on June 25, 2002, and thus his petition should be dismissed as time-barred. Munsch, in turn, makes two specific objections that addresses this finding.

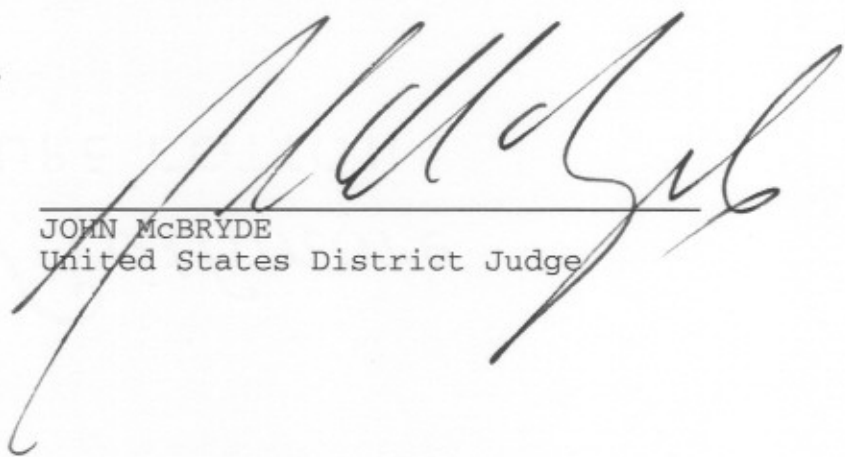
First, Munsch argues that the state-court granting of his out-of-time petition for discretionary review should toll the limitations period for filing his federal habeas petition. As the magistrate judge indicated in his findings, Salinas v. Dretke, 354 F.2d 425, 430-31 (5th Cir. 2004) is controlling precedent and indicates that such state review does not effect the running of the limitations period for Munsch's federal habeas petition.

Second, Munsch argues that he should be entitled to equitable tolling. Munsch's arguments for his untimely petition, however, do not rise to the level of a rare and exceptional circumstance beyond a prisoner's control that would have made it impossible to file his petition on time. See Davis v. Johnson, F.3d 806, 811 (5th Cir. 1998). The court concludes that because Munsch has failed to meet his burden of establishing entitlement to any equitable tolling, his petition should be dismissed as time-barred. See Phillips v. Donnelly, 216 F.3d 508, 511 (5th Cir. 2000).

Therefore,

The court accepts the findings, conclusions and recommendation of the magistrate judge and ORDERS that the petition in this action be, and is hereby, dismissed with prejudice as time-barred.

SIGNED January 9, 2007.



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JOHN MCBRYDE  
United States District Judge